

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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MADELINE MARTINEZ,

Case No. 2:20-CV-1065 JCM (DJA)

Plaintiff(s),

ORDER

V.

WALMART, INC.,

Defendant(s).

Presently before the court is plaintiff Madeline Martinez's motion to strike defendant Walmart's answer to her complaint. (ECF No. 38).

Also before the court is Magistrate Judge Daniel J. Albregts' report and recommendation (“R&R”). (ECF No. 45).

I. Background

This is a slip-and-fall matter arising out of Martinez's slipping on water coming from a floor scrubbing machine in a Walmart store. Martinez sues Walmart for damages, claiming that it was negligent in maintaining its store; hiring, training, and supervising its employees; and is vicariously liable for all defendants. Martinez moves to strike Walmart's answer or, in the alternative, for discovery sanctions, arguing that Walmart failed to preserve video evidence of the fall.

Magistrate Judge Albregts reviewed this matter and issued a report (ECF No. 45) recommending that 1) Martinez's motion to strike be granted in part and denied in part, 2) this court provide an adverse jury instruction at trial concerning Walmart's spoliation of evidence, and 3) that Martinez's and Walmart's requests for attorneys' fees be denied.

1 **II. Legal Standard**

2 This court “may accept, reject, or modify, in whole or in part, the findings or
 3 recommendations made by the magistrate.” 28 U.S.C. § 636(b)(1). Where a party fails to object,
 4 however, the court is not required to conduct “any review at all . . . of any issue that is not the
 5 subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit
 6 has recognized that a district court is not required to review a magistrate judge’s report and
 7 recommendation where no objections have been filed. *See United States v. Reyna-Tapia*, 328
 8 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court
 9 when reviewing a report and recommendation to which no objections were made).

10 **III. Discussion**

11 No objections were filed to the R&R, and the deadline for filing objections has passed.
 12 Thus, the court is not obligated to conduct a de novo review of the R&R. 28 U.S.C. § 636(b)(1)
 13 (requiring courts to “make a de novo determination of those portions of the report or specified
 14 proposed findings to which objection is made”); *United States v. Reyna-Tapia*, 328 F.3d 1114,
 15 1121 (9th Cir. 2003) (en banc) (“[T]he district judge must review the magistrate judge’s findings
 16 and recommendations de novo if objection is made, but not otherwise.”).

17 **IV. Conclusion**

18 Accordingly,

19 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Magistrate Judge
 20 Albregts’ report and recommendation (ECF No. 45) be, and the same hereby is, ADOPTED in its
 21 entirety.

22 IT IS FURTHER ORDERED that Martinez’s motion to strike or sanction (ECF No. 38)
 23 be, and the same hereby is, GRANTED IN PART AND DENIED IN PART. Should this matter
 24 reach trial, the court will include an adverse jury instruction stating, in sum, that video footage
 25 depicting Martinez’s fall, which was within the control of and made unavailable by Walmart,
 26 could have provided information unfavorable to Walmart.

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1 IT IS FURTHER ORDERED that Martinez's and Walmart's requests for attorney's fees
2 be, and the same hereby are, DENIED.

3 DATED October 13, 2021.

4 
5 UNITED STATES DISTRICT JUDGE

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